No. 82-976

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

ROSCOE HOWARD, JR.,

Respondent.

REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIFTH APPELLATE DISTRICT

JOHN K. VAN DE KAMP
Attorney General of the
State of California

WARD A. CAMPBELL
Deputy Attorney General

EDDIE T. KELLER
Deputy Attorney General

555 Capitol Mall, Suite 350
Sacramento, California 95814
Telephone: (916) 323-6391

Attorneys for Petitioner

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THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL REVERSING RESPONDENT'S FIRST-DEGREE MURDER CONVICTION IS PREDICATED ON FEDERAL LAW, NOT STATE LAW

Respondent argues that the reversal of his conviction for first degree murder by the California Fifth District Court of Appeal is based on state grounds rather than federal law. Not so.

The issue in this case is whether or not respondent was "in custody" within the meaning of this Court's opinion in Miranda v. Arizona (1966) 384 U.S. 436. To determine "custody," California courts have always purported to rely on the definition of "custody" in the Miranda opinion. The opinion of the California Supreme Court in People v. Arnold (1967) 66 Cal.2d 438 speaks for itself:

> "Accordingly, we adopt the definition of the United States Supreme Court of in-custody interrogation: 'By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' (Italics added.) [Miranda v. Arizona.]

(384 U.S. at p. 444.)" (Id., at 448.)

Since Arnold, courts have held repeatedly that California follows the definition of "custody" first pronounced by this Court in Miranda. (In re Deborah C. (1981) 30 Cal.3d 125, 130 fn. 1; People v. Ceccone (1968) 260 Cal.App.2d 886, 892; People v. Hazel (1967) 252 Cal.App.2d 412, 417 fn. 2; People v. Aikens (1977) 72 Cal.App.3d Supp. 11, 15-16; Lowe v. United States (9th Cir. 1969) 407 F.2d 1391, 1396-1397.)

The opinion in this case is obviously based on federal grounds. The state appellate court does not cite any state constitutional provision nor any other state law as an "independent" basis for its decision. (Oregon v. Hass (1975) 420 U.S. 714, 719-720; Fare v. Michael C. (1978) 439 U.S. 1310, 1315 (Rehnquist, J., Circuit Justice).) Furthermore, other California

cases have distinguished Mathiason (People v. Farris (1981) 120 Cal.App.3d 51, 56), thus revealing the federal basis for their decision. (Oregon v. Hass, supra, at 719-720.) 1/

Finally, it is not a matter of California judicial policy to adopt independent state grounds on Fifth Amendment issues. (People v. Prysock (1982) 127 Cal.App.3d 972, 986-987.) On any particular issue, the California Supreme Court has been explicit and deliberate in adopting a standard different from the federal. (See,

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1. Petitioner calls the Court's attention to the lower court's opinion reversing the first-degree murder conviction of respondent's codefendant, Jerry Beheler. In that case, the court also reversed on Miranda grounds and went to great lengths to distinguish Oregon v. Mathiason (1976) 429 U.S. 492, thus revealing the federal basis of its decision. (Oregon v. Hass, supra, 420 U.S. at 719-720.) The opinion in People v. Beheler (5 Crim. 5136; Kern County No. 20967) is attached to petitioner's application for stay on file with this Court (A-719) and also with the petition for certiorari filed with this Court on March 7, 1983 (No. 82-1666).

e.g., People v. Jimenez (1978) 21 Cal.3d 595, 605-609; People v. Pettingill (1978) 21 Cal.3d 231, 246-252; People v. Disbrow (1976) 16 Cal.3d 101, 113.) However, since Arnold, the California high court has never initimated that California defined "custody" more broadly than this Court in Miranda v. Arizona, supra.

Indeed, this is precisely petitioner's contention -- that the court below, like the Oregon court in Mathiason, has read the Miranda requirements too broadly by considering extraneous and irrelevant factors in determining custody. (Oregon v. Mathiason, supra, 429 U.S. at 493.)

Respondent's attempts to distinguish Mathiason merely obfuscate the issue. The fact that California has adopted a higher standard of proof, the reasonable doubt standard, for determining the voluntariness of a confession is irrelevant. Neither Mathiason nor the instant case are

standard of proof cases. Rather, they both concern a judicial interpretation of Miranda which extends its requirements beyond situations in which a suspect is subjected to the inherently compulsive pressure of interrogation while being in actual police custody. Petitioner's quarrel is not with the standard of proof, but with the factors considered by the court below in determining "custody." Nothing in the California cases implies that the State Supreme Court's adoption of the reasonable doubt standard meant an expansion of the definition of "custody" for Miranda purposes.

The fact that the police did not advise respondent of his rights prior to talking to him did not mean that he was unfairly tricked or forced into incriminating himself. Miranda is not a game, the object of which is to discourage confessions. (Miranda v. Arizona, supra, 384 U.S. at 477-478.) It does not matter that the

respondent might be unaware of the seriousness of his situation or the legalities involved. (People v. Mitchell (1982) 132 Cal.App.3d 389, 405; People v. Neely (1979) 95 Cal.App.3d 1011, 1017; United States v. Campbell (9th Cir. 1970) 431 F.2d 97, 99 fn. 1; State v. Carter (S.C. 1979) 250 S.E.2d 263, 267-268 and cases cited therein; see also Collins v. Brierly (3d Cir. 1974) 492 F.2d 735, 738; People v. Williams (1981) 30 Cal.3d 470, 491.) The level of suspicion harbored by the police questioning respondent and the nature of their questioning are also beside the point. (Oregon v. Mathiason, supra, 429 U.S. at 495-496; Beckwith v. United States (1976) 425 U.S. 341, 345.)

The critical question is whether respondent was deprived of his freedom of action in any significant way during his police interview. Only then, would he be subject to the inherent compulsion to incriminate himself condemned by the Fifth

Amendment and cured by the Miranda advisements. As the lower court itself found respondent, willingly contacted the police and confessed. He offered to talk after another accomplice, Beheler, advised him he would not be held. He left the police station after a 12 minute interview. He did not even believe he was in custody. He was right. Thus, respondent was never subject to the inherent coercion of "custody," the situation that must be present to trigger the Miranda requirements. He was not compelled to incriminate himself and no Fifth Amendment violation occurred.

Certainly, there was nothing about his interview which intruded on the two central values of the Fifth Amendment protection against self-incrimination -- the dignity of the individual and the integrity of the fact-finding process. (Miranda v. Arizona, supra, 384 U.S. at 460, 466.) Respondent's decision to speak was not made under circumstances in which his will to

resist and freedom of choice were nullified by his being controlled or restrained under the authority of the police.

The opinion below analyzes "custody" as a balancing test of location, focus, restraint, and interrogation. Mathiason rejected such a "coercive environment" analysis because it expanded the Miranda requirements to include police-suspect encounters that did not involve the compulsion of being in police custody. In short, the opinion of the Califoria Fifth District Court of Appeal impermissibly imposes greater restrictions on the police as a matter of federal constitutional law when this court has specifically refrained from imposing such restrictions. (Oregon v. Hass, supra, 420 U.S. at 719.)

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Respondent's argument should be rejected and the petition should be granted.

Respectfully submitted,

JOHN K. VAN DE KAMP
Deputy Attorney General
of the State of California

WARD A. CAMPBELL
Deputy Attorney General

By _____
EDDIE T. KELLER
Deputy Attorney General

Attorneys for Petitioner